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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/661,912

09/12/2003

James P. Gardner JR.

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08/07/2008

FAEGRE & BENSON

ATTN: PATENT DOCKETING

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90 SOUTH SEVENTH STREET

MINNEAPOLIS, MN 55402-3901

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

08/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/661,912 | Applicant(s) GARDNER ET AL. | |
| | Examiner NEIL LEVY | Art Unit 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12, 15-19, 24-30, 41-46 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 15-19, 24-30, 41-46, 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-9, 12, 15-19, 24-30, 41-46 and 53 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

.Note that boric acid, not Mg nanoparticles, is the elected stabilizer.

Claim Rejections - 35 USC § 102

Claim1,3,5, 7, 12, 16, 17, 41-44, 46 and 53 STAND rejected under 35

U.S.C. 102(b) as being anticipated BARCAY et al 5820855.

The base baits & 5-50% fat, shown as a stabilizer for the water sensitive insecticides, inclusive of the soluble boric acid, meet the instant composition claims, whether used for the same purpose or not.

Claim1,3-5, 7, 9, 12, 13, 16-19, 46 & 53 stand rejected under 35 U.S.C. 102(b) as being anticipated HONSYU et al CN1155978.

Stabilizer can be considered to be the gelling agent, @ 0-50% (p. 3, # 4). Mixing is at claim 9. Acephate is at claim 3, attractant at claim 4. The high toxicity (page 3) is provided by the formulation, that of the instant as claimed, so, inherently, of the same claimed results-100% death resulted after 72 hours (Table 3) for cockroach.

Claim Rejections - 35 USC § 103

Claim1-9,12,15 -19,24-29, 41, 42, 46 & 53 stand rejected under 35 U.S.C.

103(a) as being unpatentable over DYKSTRA et al WO 91/07972 in view of Twydell

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DYKSTRA :See claim 2-baits include feeding stimulants and attractants (page 5) and humectants to retain water (50% in Example, page 6) included are protein, oil, and molasses (page 5). Mortality was more than 50% in 1 day, and 95% at 72 hours, thus meeting the instant claims, if cockroach is the insect. Boric acid (Example 1) is 5% acephate is used at 0.5% (Example 3) thus obvious to combine at these rates, when combination (page 5, lines 8, 9, claim 2) are used.

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Twydell ; Gel baits are made here too, see exmple 3; a sufficient amount of boric acid is used to meet the instant claimed stabilizer-

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the Dykstra acephate/boric acid baits modified as desired to increase stability, dispersibility, compatability of ingredients, processing ease, reduced toxicity to handlers& increased effectiveness by increasing the amount of boric acid, as shown possible by Twydell.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

Double Patenting

Claim 1-9, 12, 15-19, 24-29, 41, 42, 53 stand. rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-11 of U.S. Patent No. 7,192,600. Although the conflicting claims are not identical, they are not patentably distinct from each other because for reason of record.

Response to Arguments

Applicant's arguments filed 7/29/08 have been fully considered but they are not persuasive. Arguments are addressed above, in essence, the stabilizer is argued to not be so stated in the references- examiner finds, absent specifying the desired stabilizer, anything construed to provide some kind of stabilization or other in fact meets the claim language.

The double patenting rejection over 5,820,855 is withdrawn, as is the anticipation over Dykstra.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615
